

Child Law Project

Care Proceedings: Guide for Parents and Children

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This guide is for information purposes only. This guide does not constitute legal advice. Legal advice should be sought from a solicitor.

Who are Tusla?

Tusla is the name used by the Child and Family Agency (CFA), which was set up in 2014 to take over the child protection and welfare work of the Health Service Executive (HSE). Its tasks are set out in the Child Care Act, originally passed in 1991 and later amended. The name “Tusla” is not used anywhere in legislation. The formal name of the organisation is the ‘Child and Family Agency’. We have used the term ‘Tusla’ in this guide.

What does Tusla do?

Under the Child Care Act, the job of Tusla is to promote the welfare of children who are “not receiving adequate care and protection”. This means providing family support services and alternative care (in foster care or residential care settings) for children who cannot live with their families for various reasons. However, the Child Care Act says that it is generally in the best interests of a child to be brought up in his or her own family, and that the wishes of a child must be considered. The consideration given to their wishes will depend on the age and maturity of the child. Removing children from their families should be a last resort.

If a family needs help and support, they can go to one of the family support services around the country provided by Tusla. Sometimes this is not enough, and the child or children need to live with someone else, or the family needs to have someone visit regularly to make sure the children are being properly looked after. These options are described below.

Tusla is also the organisation which arranges the adoption of children.

What is care?

If Tusla considers a child needs to live outside their own family for a while, the child goes into care, usually living with foster parents. There are different kinds of care: voluntary care, court-ordered care and “special care”. Special care is ordered by the High Court, and means

the child is held in a special residential unit where he or she receives specialised therapy and educational support. It is described further below.

There can be a number of reasons why children are cared for by someone other than their parents. Parents might be dead and the children have no relative available to look after them. Where the child has been living with just one parent, that parent might become ill or be imprisoned. The child might be found lost or abandoned, and, while every effort will be made to reunite the child with their family, this is not always possible. This includes children who arrive in Ireland from abroad without their parents, known as “unaccompanied minors”.

Sometimes the child or children are not being properly looked after by their parents, perhaps because the parents are addicted to alcohol or drugs or have serious disabilities, and the children are not receiving adequate care and protection, for example, not attending school regularly, not getting regular and nourishing meals, being left alone at home or on the street. In rarer cases, children might be physically, emotionally or sexually abused by their parents, or by people known to their parents without the parents protecting them.

Problems like this are usually brought to the attention of Tusla by teachers, doctors, neighbours or others concerned about the children, and social workers then visit the family to see what needs to be done. In all this, the welfare of the child has to be the most important thing when decisions are being made.

Tusla should also take all reasonable steps to find accommodation for homeless children.

Voluntary care

If Tusla considers that a child needs to go into care, it will discuss this with a parent or parents and see if they agree. If parents agree, the child will then enter care on a voluntary basis. Alternatively, a parent may approach Tusla and request that they take their child into care to allow them to focus on addressing a personal problem, such as an addiction. The child might go to live with a relative, or might go to one of the foster families that work with Tusla. A parent can decide at any stage that they would like the child to return home, and the child then returns. However, if Tusla considers the child will be at risk of harm at home, it will go to court and ask the court to make a care order. If the court agrees, this means that the child will remain in care. There are three types of care order, described below.

Involvement of the Gardai

If the Gardai come across, or are told about, a child who seems to be in immediate and serious risk to their health or welfare, they can remove the child from home to a safe place

They can enter any home or premises without needing a warrant in order to do so. They must bring the child to Tusla as soon as they can. Tusla must then go to court within three days to ask for an emergency care order to keep the child in its care or return the child to their parents.

Court-ordered care

Where a child's parents do not agree that the child needs to be in care, Tusla goes to court to ask for a court order. The court hearing this is the District Court, the lowest level of court and the court closest to where most people live. If either parents or Tusla do not agree with the decision of the District Court judge they can appeal to the Circuit Court.

Applications to take a child into care are heard *in camera*, that is, no member of the public can attend, and any journalist or specialist reporter who attends cannot publish information that could lead to the child or family being identified by a member of the public. Nobody, including the parents of the child, can publish on social media or elsewhere any information about the proceedings and can be brought to court and even jailed if they do so.

Emergency care order

Tusla does not have to tell parents that it is looking for an emergency care order, though it can do so, and they must be notified as soon as possible. The judge in the District Court must be convinced that there is both an immediate and serious risk to the health or welfare of a child before making the emergency care order. An "immediate" risk that is not also "serious" is not enough to get this order and a "serious" risk has to be also "immediate". This means that a serious risk that has been known about for some time is not enough for an emergency care order. The emergency care order lasts for a maximum of eight days. After that Tusla must either allow it to lapse and the child goes home, or it must ask the court for a care order, usually first an interim care order.

Interim care order

A care order is an order by the court that a child needs to be in care for the rest of his or her childhood, or for a shorter time, because of the risk to their "health, development or welfare". This has to be proved to the court by evidence brought by Tusla, and parents are entitled to challenge that evidence. It takes time to get together the evidence for a care order, so the first order looked for by Tusla is an interim care order, while preparing to look for a long-term care order.

The judge does not need to be *sure* that the child is at risk when he or she grants an interim care order, he or she needs to consider "there is reasonable cause to believe" one of three

things: that the child has been assaulted, ill-treated, sexually abused or neglected while in the care of his or parents; that the child's health, development or welfare has been damaged; or are likely to be damaged in the future, if the child does not come into care.

Social workers from Tusla will describe to the judge what they have seen to support their opinion that one of these conditions exist. A parent or parents can question this and are usually entitled to a lawyer from the Legal Aid Board to help them challenge the evidence brought by Tusla. If the judge feels that it is reasonable to accept the evidence of Tusla, he or she will make the interim care order, which lasts for 29 days. The order must then be renewed, unless the parents agree to it lasting longer.

When a child is under an interim care order a parent or parents still have all the rights of parents to make decisions about the child, for example, in relation to medical treatment or the child getting a passport, though the judge can over-rule them if this is in the interests of the child. While the child is in interim care he or she will see their parents from time to time, arranged by Tusla. This is called "access", and if there is a serious risk to the child from their parent the contact will be supervised by someone from Tusla. If the risk is extremely serious the court may refuse access.

Guardian ad litem (GAL)

When Tusla looks for a care order for a child, the judge can appoint a "guardian *ad litem*" for the child, known by the initials GAL. The GAL's role is to find out what are the views of the child and to tell the court, and also give his or her views on what are the best interests of the child. However, at the moment not all judges in all cases appoint a GAL, though this will be changed when new legislation comes into force. The GAL talks to the child, their parents and other people who know the child, like teachers, so that they can give the judge as full a picture as possible of the child and their family, to help him or her make their decision.

The child's involvement in the proceedings

If a child asks to be present during some of the proceedings the judge may allow it, unless they consider this not to be in the child's own interests, and in practice this happens very rarely. The Child Care Act also allows the judge to make the child a "party" to the proceedings, that is, to have their own lawyer to represent their own wishes. This also occurs rarely, and only when the child is considered old and mature enough to understand the proceedings and give instructions to a lawyer. However, the judge may get the views of the child in other ways, by meeting them privately in their room in the court or by receiving a letter or video from a child, as well as through the involvement of a guardian *ad litem*.

Care order

While a child is in care under an interim care order an application for a care order, sometimes called a “full care order” is being prepared by Tusla. This might involve assessments of the child’s mental or physical health or education. It might involve an assessment of a parent’s ability to look after the child, called a “parental capacity assessment”. This usually involves seeing how the child and parent relate to each other during access and a psychological or other assessment of the parent.

Some parents can find it hard to understand certain things, including how to parent and care for their child. Where this seems to be the case, their ability to understand might also be assessed, called a cognitive assessment. The assessment will include looking at what help and support a parent would need to be able to look after the child themselves, and whether it is realistic for a parent to do so with this support.

The evidence brought to court by Tusla to support its application might include how the child was being cared for at home, whether the home was clean or in a state where the children might pick up illness or disease, whether there was enough nourishing food for the children, whether they were being brought to the doctor for vaccinations or when they were ill, whether they were going to school or a creche, whether they were allowed to play or if parents were interacting with their children so that they could develop normally. In a minority of cases it also includes whether the child was physically or sexually abused. Tusla will also present to the court the results of any assessments that have been carried out.

The judge has to be “satisfied” that one of the three conditions already listed for an interim care order exists before granting a care order. It is not enough to consider that they are likely. The courts take this very seriously, as a full care order means that Tusla is taking over the role of the parents and caring for the child. It means that Tusla makes the decisions about where the child lives, about medical, psychological or psychiatric treatments, applying for a passport for the child, etc. The parent no longer has the right to care for or make decisions about the child, though they do have the right to ongoing contact with the child, known as “access”, unless this is considered not in the child’s interests. If the child is separated from siblings, they also have the right to contact with them or other people important to them.

A full care order lasts until the child reaches the age of 18, but can be made for a shorter time if the judge thinks that a parent, with support, can resolve the problems that led to their child coming into care.

Supervision orders

Sometimes when Tusla looks at the situation of a child in a family where there have been some of the problems described earlier, it will decide that a care order is not necessary, but that the family needs to be supervised for a time to ensure that the children are being properly looked after. This will require regular visits to the family home to check that it is being kept clean, that there is food in the house, that the children are properly clothed and going to school, and that they are receiving any medical treatment they might need. A supervision order is usually made for 12 months, but this can be varied by the court. Tusla may also require parents to seek various assessments or treatments for the child. Tusla cannot insist that parents undergo assessments or treatments, but the refusal of parents to do so could lead to a care order being sought.

Opposing a care order

When Tusla tells parents it is going to go to court to look for a care order they are usually entitled to free legal representation from the Legal Aid Board through their local Law Centre. Their lawyer will then challenge either the evidence of Tusla, or what it means in terms of the parents' parenting.

For example, it is not enough for a social worker to have a different opinion to parents about bringing up children, if it cannot show that the child's welfare is being seriously harmed. People from different ethnic backgrounds often have different ways of bringing up their children than Irish people do, and this can relate to the ages at which children are given responsibilities, to physical punishment (which is now illegal in Ireland) and to gender roles. In some such cases a cultural mediator may be involved.

While generally Tusla will be concerned if a child is not going to school, attending school is not compulsory if parents can demonstrate that the child is receiving an adequate education at home (home-schooling). This will require the involvement of qualified people and inspection by the Department of Education.

Even if most of the evidence brought by Tusla is not challenged, the parents' lawyer can argue for a supervision order instead of a care order, or for a short care order to allow parents to seek support around the issues that gave rise to Tusla's concerns about the children. This could involve treatment for addiction or mental health problems, or support in situations involving domestic violence.

Ending a care order

A care order can be made until a child reaches the age of 18, or for a shorter time if the judge decides that a parent just needs some time to sort out his or her problems. The judge might ask Tusla and the parents to come back to court to “review” the order and see how the child is getting on. If the parent’s circumstances have changed or if his or her problems have been solved, the judge can decide to end or “discharge” the order. Parents, or another person (for example, a guardian *ad litem*) can ask the court to discharge the order, and then the child will return home. Where Tusla considers that the parent has overcome their problems and a good relationship with the child has been maintained, it will apply to discharge the care or supervision order.

Other reasons for care applications

In some cases where parents themselves are in court because of a dispute between them about the children, or where domestic violence complaints are made, the judge can adjourn the case and ask Tusla to investigate the child’s circumstances. If, following this investigation, Tusla considers the dispute to be seriously affecting the welfare of the child, it can apply for a care order or supervision order, or services for the child or its family, or that other action relating to the child be taken. If one parent is the victim of domestic violence at the hands of a partner, which affects the welfare of the children, and if the parent is not willing to seek a protection or a barring order, Tusla can apply for such an order to protect the children from the impact of domestic violence.

Special care

Because of their behaviour and particular needs, a small minority of children need very specialised care which cannot be provided by their families or by regular foster carers. An amendment to the Child Care Act spells out the circumstances in which the child can be detained in a special care unit by an order of the High Court. As well as providing care, the special care units provide medical and mental health assessment, therapeutic intervention and educational support.

Special care is required when a child’s behaviour poses a threat of harm to his or her life, health, safety, development or welfare. Tusla must believe that care in the regular care system, or treatment under the Mental Health Act (which allows children to be detained for treatment for mental disorders) will not address the needs of the child. A special care application can only be made for children between the ages of 11 and 18.

In these cases, Tusla consults with the child and with his or her parents and guardians (except where it considers it not in the interests of the child to do so) and convenes a family

welfare conference to discuss the child's situation. It then applies to the High Court for a special care order or an interim special care order. The child is the named person in the application and is represented in court by a guardian *ad litem*, and the parents or guardian, or sometimes other relatives, are "notice parties", that is, they have the right to attend and be heard.

A special care order is made for a maximum of three months, and must be reviewed every four weeks, with Tusla reporting on the child's progress to the court. If the child is benefitting from special care but needs further treatment in the unit, the High Court can extend the special care order for two further periods of three months. The High Court can also give directions about the treatment of the child in special care.

If Tusla has not made a decision on applying for special care, but considers the child needs the protection that detention in a special care unit would provide, it can apply for an interim special care order while further assessments are carried out. It can do so without notifying the parents or guardians if it considers it necessary. The interim care order lasts for 14 days and can be extended for up to 21 days. In all cases involving special care orders or interim special care orders, the High Court can ask the Gardai for help in finding the child if he or she has gone missing or has absconded from the special care unit.

When a child is in special care, Tusla has parental rights over that child, meaning it can take decisions relating to the child's education, health and welfare, including medical and psychiatric examinations and treatment. In some cases, where it appears there is no unit in Ireland providing treatment suitable to the needs of the child in question, Tusla can send the child to a suitable unit abroad.

When the period of detention in a special care unit has expired, or where Tusla considers that the child is no longer benefitting from it, it can ask the High Court to have the child released either to a residential unit in the regular care system, or to a relative or foster carer. The High Court can specify what treatments should continue for the child after their release from special care.

In some cases, where the child or young person is very vulnerable and will not be able to live independently outside of special care, an application is made to make them a Ward of Court, which is a system where vulnerable people have their affairs looked after by the State. That is being superseded by a new system for adults of "assisted decision-making", but this system is not yet fully operational.

Aftercare

As a child in care approaches the age of 18 Tusla must prepare an aftercare plan outlining the supports the child will be provided with after reaching that age. This includes support in continuing education up to the age of 23, if necessary. In some cases, aftercare involves the child continuing to live with their foster family. In others it means living in supported accommodation, though suitable accommodation is not always available for young people leaving care.